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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

NO. 563

MIRIAM G. HOSTETTER,
Petitioner,

v.

UNITED STATES OF AMERICA.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT AND BRIEF
IN SUPPORT THEREOF.**

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*To the Honorable, the Chief Justice and Associate Jus-
tices of the Supreme Court of the United States:*

The petition of Miriam G. Hostetter, respectfully
represents:

I. SUMMARY STATEMENT OF THE MATTER INVOLVED.

Your petitioner requests this court to review the judgment of the Circuit Court of Appeals of the Third Circuit in the above cause. The judgment was entered on June 27, 1940 and a petition for rehearing was denied on August 9, 1940.

The Circuit Court of Appeals affirmed the judgment entered in favor of the respondent and against the petitioner by District Judge Robert M. Gibson for the District Court for the Western District of Pennsylvania (R. 195).

Miriam G. Hostetter, the petitioner, on March 14, 1927, filed her individual income tax return for 1926, upon the cash receipts and disbursements basis, disclosing a tax payable of \$32,599.77, and paid this sum on the same date to the Collector (2nd Find., R. 186).

On March 12, 1930, the petitioner filed a claim for a refund of the sum of \$22,912.54 on the ground that she was entitled to a deduction, not claimed in her return, of the sum of \$92,451.56 on account of inheritance tax paid by her to the State of California on her life interest in the estate of her deceased husband, D. Herbert Hostetter (3rd Find., R. 187).

Petitioner's claim for refund was rejected by the Commissioner on January 22, 1932 and petitioner filed this suit on January 20, 1934 under the Tucker Act to recover the sum of \$22,912.54, with interest (4th Find., R. 187).

The deduction of the item of \$92,451.56 from her gross income for 1926 would reduce the amount of income tax from the sum of \$32,599.77 to \$9,687.23, or a difference of \$22,912.54, the amount of the refund claimed (Petition, Par. 8th, admitted by answer, R. 16).

D. Herbert Hostetter died on September 28, 1924 (5th Find., R. 181). He left to survive him his widow, Miriam G. Hostetter, petitioner; two sons, D. Herbert Hostetter, Jr., and Frederick G. Hostetter; and two daughters, Miriam H. Young and Helene Hostetter; and four grandchildren (5th Find., R. 181).

By his will (Ex. 1, R. 78) he appointed Miriam G. Hostetter, his wife, and Helene Hostetter, a daughter, and the Fidelity Title and Trust Company, of Pittsburgh, as his executors and trustees (R. 83).

In Paragraph Two of his will, testator devised the residue of his estate to his trustees, in trust, to pay one-half the income to his wife, the petitioner, during her life and one-eighth of the income to each of his four

children during their lives and to pay shares of the income for life to his four grandchildren after the death of their parents.

The California inheritance tax upon the estate of the testator was assessed by decree of the Superior Court of Los Angeles County dated January 20, 1926, which provided (Ex. 2, R. 87):

"That the market value of the property subject to inheritance tax in the above entitled proceeding is \$3,636,701.58; that the persons to whom said property passed from decedent, their relationship to decedent, *the value of their respective interests in said property, and the taxes to which the same are respectively liable*, are hereby assessed and fixed as follows: (Italics ours)

"Name and Relationship	Value of Interest	Tax
Miriam G. Hostetter, Widow	\$ 941,179.63	\$ 92,451.56
D. Herbert Hostetter, Jr., Son	542,926.73	44,801.21
Frederick G. Hostetter, Son	552,274.73	45,922.97
Miriam H. Young, Daughter	572,545.01	48,355.40
Helene Hostetter, Daughter	580,543.62	49,315.23
Frederick G. Hostetter, Jr., Gr. Son	111,807.97	3,476.56
Anna Hostetter, Gr. Daughter	111,807.97	3,476.56
Jane Hostetter, Gr. Daughter	111,807.96	3,476.56
Barbara Smith, Gr. Daughter	111,807.96	3,476.56
	<hr/>	<hr/>
	\$3,636,701.58	\$294,752.61."

The report (Ex. 2, R. 91) of the inheritance tax appraiser was filed previously on January 5, 1926 and stated the tax in substantially the same language and form as the order of the Superior Court just quoted.

The receipt (Ex. 2, R. 95) of the County Treasurer issued for the tax on February 10, 1926 stated that the tax paid was upon the gifts to the beneficiaries listed.

The total tax of \$294,752.61 was paid by one check of the Fidelity Title & Trust Company. Before the check was sent, the attorneys for the Pennsylvania trustees had secured from the attorneys for the California executors a written opinion that the California inheritance tax was assessed against the beneficiaries individually, and it had been agreed by these attorneys, the trustees and the beneficiaries that the Pennsylvania trustees should advance or loan the amount of the tax to the beneficiaries out of the principal of the trust and that the beneficiaries should pay the tax with the money so advanced (Ex. 4, R. 111; Ex. 5, R. 111; Ex. 8, R. 119; Ex. 9, R. 121). A written agreement dated January 15, 1926 (Ex. 6, R. 112), was executed under which the beneficiaries gave their notes to the trustees for the amounts advanced to them for the purpose of paying the California tax. These notes were for the exact amount assessed against each beneficiary by the decree of the California court.

The first and final account of the California executors (Ex. 10, R. 125-126), charged these executors with the item of \$294,752.61 as advancements to the widow and other beneficiaries to pay California inheritance taxes. The supplemental account of the Pittsburgh trustees dated May 21, 1927 (Ex. 11, R. 126), listed the notes of the same beneficiaries as assets of the estate.

By requirement of the Orphans' Court of Allegheny County the agreement of January 15, 1926 (Ex. 6, R.

112) was superseded by an agreement executed under date of July 1, 1927 (Ex. 13, R. 127). This second agreement was similar in form, but shortened the period of installment payments from ten to six years and required the notes of the beneficiaries to be secured by collateral (Ex. B, Ex. C, Ex. D, R. 173).

Miriam G. Hostetter, the widow and petitioner, on October 27, 1927 repaid to the trustees in cash the full sum of \$92,451.56 which had been loaned to her to pay her share of the California tax.

The item of \$92,451.56 was not claimed as a deduction by the petitioner in her income tax return for the year 1926, and was not claimed as a deduction in the income tax returns filed by the executors or in the fiduciary return filed by the trustees for the year 1926, or any other year (R. 15).

The executors filed an estate tax return on which the Commissioner assessed an estate tax liability of \$1,819,838.91. Against this assessment the Commissioner allowed a credit for payment of state inheritance taxes which included the item of \$294,752.61, which had been paid to the State of California. (Ex. 16, R. 162; Ex. 17, R. 166; Ex. A, R. 171).

The right to this deduction was claimed by the petitioner under both clauses a (4) and a (5) of Section 703 of the Revenue Act of 1928, which are quoted in the Appendix (*infra*, pp. 29-30).

The opinion of the District Judge held that the payment of \$92,451.56 for California tax had been made by the estate and not by the petitioner as beneficiary. This finding was a conclusion from documentary and other written evidence and also was based upon an interpretation of a written agreement.

The opinion did not discuss the right of the petitioner to the deduction under clause a (5), Sec. 703.

The District Judge also held that because the estate had received a credit for the \$294,752.61 for California Inheritance Tax against the Federal Estate Tax, the petitioner might not be heard to assert her payment of \$92,451.56, as a beneficiary, as a deduction in her personal income tax return (R. 191). The opinion stated that the credit against the Federal Estate Tax had been secured by the representation that the executors had paid this sum. As will be shown in the brief, such representation was not made and was not necessary in order to secure the credit against the Federal Estate Tax.

The Circuit Court of Appeals affirmed the decision of the District Court. Its opinion held that the petitioner was not entitled to the deduction under clause a (4) because the California tax had been paid by the estate; and that she was not entitled under clause a (5) because she had not proved that the right of the estate to claim this deduction was barred by the statute of limitations *at the time the petitioner filed her claim for refund.*

II. JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on June 27, 1940. A petition for rehearing was denied on August 9, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

III. QUESTIONS PRESENTED.

Did the Circuit Court of Appeals properly interpret retroactive subparagraphs a (4) and a (5) of the Revenue Act of 1928, in holding that—

(1)—The evidence did not show that payment of the California inheritance tax had been made by the petitioner as beneficiary within the meaning of subparagraph a (4) ?

(2)—Petitioner could not recover under subparagraph a (5) because the evidence did not show that the claim of the estate to deduction was barred by the statute of limitations at the time when the petitioner filed her claim for refund?

(3)—Did the fact that the amount of the California inheritance tax was allowed as a credit against the Federal estate tax prevent the petitioner, as beneficiary, from claiming a deduction for her share of the California inheritance tax in her personal income tax return, as ruled by the District Judge and not reviewed by the Circuit Court of Appeals?

(4)—Did the Circuit Court of Appeals properly hold that there was substantial evidence to support the finding of the District Judge, that the California inheritance tax had been paid by the estate?

(5)—Did the Circuit Court of Appeals err in holding that the finding of the District Court was conclusive if supported by substantial evidence, where such finding was a conclusion drawn from documentary evidence and involved the interpretation of a written contract?

IV. REASONS RELIED ON FOR ALLOWANCE OF WRIT.

(1)—In holding that the California inheritance tax was paid by the estate and not by the beneficiary, the Circuit Court of Appeals placed a construction on subparagraph a (4) in conflict with the decisions in the class of cases in which inheritance tax was paid by the check of the fiduciary and out of the funds of the estate and yet was held to have been paid by the beneficiary, where the amount was either deducted from the share of the beneficiary in the principal of the estate or repaid to the estate by the beneficiary from his share of the net income, or otherwise.

(2)—The interpretation of subparagraph a (5) as allowing the deduction only if the estate's claim to a deduction is barred by the statute of limitations at the time when the beneficiary files her claim for refund—renders subparagraph 5 virtually useless and inapplicable. Such interpretation is contrary to the plain purpose of subparagraph a (5) as set forth in the reports of the House and Senate Committees on the passage of Section 703 (Appendix, pp. 34-35).

(3)—The ruling of the District Judge, not reviewed or corrected by the Circuit Court of Appeals, that the fact that the amount of the California tax was allowed as a credit against the Federal estate tax prevents the petitioner, as a beneficiary, from claiming a deduction for her share of the California tax, is erroneous. This interpretation of Section 703 of the Revenue Act of 1928 and of Section 301 (b) of the Revenue Act of 1924, would deny the right of a beneficiary to deduct her share of estate inheritance tax in every case where the item of estate inheritance tax was credited against the Federal estate tax; or at least in every case where the bene-

ficiary was also a fiduciary participating in obtaining such credit.

The purpose of allowing the credit against Federal estate tax was to afford some relief from double taxation on the same assets whether the inheritance tax is paid by the estate or by the beneficiary. In either case the inheritance of the beneficiary is ultimately diminished.

(4)—It has been held by the Third Circuit Court of Appeals and by other circuits that a finding which is a conclusion from undisputed or record facts may be reviewed by the appellate court, whether or not there is substantial evidence to support such conclusion.

The finding of the District Judge, approved in this case, was based upon documentary evidence and upon an interpretation of a written contract involving a question of mixed law and fact.

The approval of the finding of the District Judge is further based on the check and the written agreement without considering the other documents which show the purpose of the check and by whom the payment was ultimately made.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of this Honorable Court directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that court to certify and send to this court for its review and determination, a full and complete transcript of the record and all proceedings in the case of Miriam G. Hostetter, petitioner, v. United States of America, respondent, No. 7233; and that the judgment of said Circuit Court of Appeals may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

MIRIAM G. HOSTETTER,

By *H. L. Starnes*, Attorney.